"As regards the position of the plaintiff, it is of course unfortunate that he, though personally blameless, should suffer for the default of his agent; but if he does, he is not without a remedy, for unless he himself has caused or consented to the delay which has resulted in his action being dismissed for want of prosecution, he will have a right of action against his solicitor for negligence.... If the action is dismissed the plaintiff, in a subsequent action for negligence against his solicitor can recover, in addition to the costs of the action which has been dismissed, compensation for the loss of his chances of recovering damages against the defendant in the dismissed action had it been properly conducted on his behalf by the solicitor."

It was for all these reasons that we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Murphy & Dunbar.*

NASSIM v. COLLECTOR OF LAND REVENUE

[Appeals Board (Choor Singh J., Commissioner of Appeals, Sat Pal Khattar and A.M. Cherian) September 1, 1978]

[Singapore — Appeal No. AB41 of 1972]

Land Acquisition — Rural land — Appeal from award of Collector of Land Revenue — Land containing substantial quantity of sand — Royalty method of determining value — Potential growth factor — Land Acquisition Act (Cap. 272), s. 10.

This was an appeal from an award by the Collector of Land Revenue for the acquisition of a large interior plot of land containing an area over 53 acres. The Collector awarded 20.6 cts per sq. ft. or $477,567. In his grounds of award the Collector made no reference to sand being found on the property. At the hearing of the appeal it was conceded that there was a substantial quantity of sand on the land. The main issue on the appeal was the value to be attributed to the land arising from its sand quarrying potential.

Held: (1) the royalty method of determining the value of the sand bearing potential of the land was relevant and in the circumstances a 20% tribute by way of royalty to the owner seemed to be a realistic basis of his likely income. A royalty of 20% would on the basis of the selling price of $3.50 per cubic yard yield to the owner 70 cts per cubic yard;

(2) as the acquisition took place in 1971, the potential growth factor of the land should also be taken into account. Taking into account all the relevant factors and giving the best consideration to the evidence and submissions in this case, an added value of 9 cts per sq. foot for the potential element would be reasonable;

(3) the final figure of 55 cts per sq. ft. so arrived at for the acquired land would be a realistic value as at June 9, 1971 and the award should therefore be increased to $1,271,271.65.

APPEALS BOARD (Land Acquisition).

K.E. Hilborne for the appellant.

Abdul Wahab Ghows, Solicitor-General (*Miss Tan Peck Cheng* and *Miss Tan Swee Choo* with him) for the respondent.

Cur. Adv. Vult.

Choor Singh J. (Commissioner of Appeals): This is an appeal against the award of $477,567 by the Collector of Land Revenue for the acquisition by Government of Lot 119 of Mukim XXX in the District of Teban containing an area of 53 acres 0 roods 10 poles.

The Declaration acquiring the property was published in the *Government Gazette Extraordinary* dated June 9, 1971 and in determining the proper compensation to be paid to the land owner, the value of the land must be assessed as at June 9, 1971.

The property is zoned "Rural" in the Master Plan and the land is held under a statutory land grant issued in 1963.

The subject land is a very large interior plot located off Jalan Hong Keng and is about 1½ miles from Tampines Road. It has frontage to a State Reserve. The land is undulating and some parts of the land were at the date of the acquisition covered with old rubber trees. An unmetalled road cuts across the land and is said to have been in use by the owners of the surrounding plots of land for well over 50 years. At the date of acquisition there were 13 squatter huts on the land of which five enjoyed the protection of the Control of Rent Act.

At the enquiry held on July 9, 1971 before the Collector of Land Revenue under the provisions of section 10 of the Land Acquisition Act (Cap. 272) a claim for compensation in the sum of $2,542,000 ($1.10 p.s.f.) was submitted for the compulsory acquisition of the subject land. The Collector awarded $477,567 (20.6 cents p.s.f.) on June 29, 1972. The appellant being dissatisfied with the Collector's award has appealed to this Board.

In his Grounds of Award filed by the Collector the Collector made no reference at all to sand being found on the property. At the hearing of the appeal before us, it is now conceded that there is a substantial quantity of sand on the subject land. Indeed, the main issue in this appeal is as to the quantity of sand that can be extracted from the subject property and its value as at the date of acquisition.

On behalf of the appellant it is contended that on the basis that if all the squatters are removed, there is extractable sand amounting to about 1.975 million cu. yds. On the other hand the Collector maintains that the amount of extractable sand is only 1.637 million cu. yds. If the five squatters are moved to the fringe of the land and each given 10,000 sq. ft. irrespective of the area presently occupied by them and the other eight squatters removed altogether and quarrying is carried out outside the 50 yard limit as required by the present regulations the amount of sand extractable is only 1.564 million cu. yds. according to the respondent.

Then there is the second issue as to the price which the extractable sand could have fetched at the date of acquisition and the worth of the sand bearing land to the owner in 1971.

The following points are agreed between the parties:—

(i) the land had extractable sand;

(ii) the price of sand in 1971 was $3.50 per cu. yd.;

(iii) on the agreed basis of 5 cu. yds. per lorry and 100 lorry loads working 300 days per year the amount of sand which the land would yield would be 150,000 cu. yds. per year;

(iv) that silt which is a by-produce of sand quarrying has no commercial value; and

(v) the residual value of the land after sand has been extracted would be 20 cents p.s.f.

There are two other by-products of sand quarrying — gravel and fill. In our view they have no commercial value in Singapore although contended otherwise by the appellant.

The main issue that has to be decided by the Board is therefore the value to be attributed to the land in 1971 arising from its sand quarrying potential.

The appellant urged the Board in the final analysis that the minimum value attributable to this quality is $1,895,482 and $356,895 for the gravel (see appellant's Valuer's Final Valuation Report — Exhibit 5A). To this, he adds the residual value of the land at 20 cents p.s.f. and deducts $145,000 for removal of all squatters yielding a net capital value of $1,986,065 or 86 cents p.s.f. for the land acquired. An even higher value he contends is justified by using the profits method by which method (Valuation A of appellant's Exhibit 5A) a figure of 96 cents p.s.f. is obtained. Both these methods rely substantially on an escalating cost of sand over the years. More specifically, they proceed on the basis of an average price of $4.40 per cu. yd. of sand for the first five years, $6.50 over the next five years and $9 in the last three years. The figures in Valuation B proceed on a royalty basis of 20% on these prices.

Various objections were raised by the respondent to these values and to the profits basis (Valuation A). On the ground that we are required to determine the values in 1971 between an arms-length willing buyer and purchaser, we do not think that escalating prices can be taken into account which are only meaningful with the benefit of hind sight. Another fundamental objection is that escalation of cost of production, is in Valuation A on a percentage basis which may not be accurate. Valuation B implies and results in an operating profit of 37.14% as against a cost of 62.86% for mining the sand. This is not substantiated by any particular set of accounts although two sets were in fact submitted by the respondent and one by the appellant's witness. None of these three were actual accounts of an operator-cum-owner. But the nearest figure to the appellant's valuers' projections of operating profits is appellant's Exhibit 10 which shows the net operating profit at 16%, 9% and 8% for 1970, 1971 and 1972 respectively. The owner in this case was paid $24,000 each year. If the owner is also the operator, this would make the total yield 19.8%, 12.2% and 10% for 1970, 1971 and 1972 respectively. This would itself be inaccurate as no provision is made in this method for capital outlay, interest on loans, etc.

The respondent on the other hand has conceded that the royalty method is a correct basis of valuation. His witness, Mr. Lim Soo Chin has drawn up his final Report (Respondent's Exhibit R9) on this basis. Using the same basis of 150,00 cubic yards as being the annual production but using the multiplier based on the life of quarry being 10.5 years (against 13 years in Valuation B in appellant's Exhibit 5A) he obtains a valuation of between 31.17 cents p.s.f. and 34.63 cents p.s.f. The difference is based on whether property tax and managing expenses are taken into account or ignored. Adding to this the common factor of 20 cents p.s.f. for the residual land the respective figures become 51.17 cents and 54.63 cents p.s.f. In both alternatives, he seeks to deduct 11.68 cents p.s.f. because in his view, it would cost $270,000 to resite the five protected tenants and pay off the eight non-protected tenants. In the final analysis he therefore asks the Board to award 39.49 to 42.95 cents p.s.f. for the land.

He checks this by comparative sales of what he contends are similarly placed land of which he has detailed six instances in his Report. We find items (a) to (d) of these comparisons on page 8 of this Report not relevant. In each of these cases the land is too small to offer meaningful guidance. In the other two cases, although these are admittedly sand quarry lands these have not been worked as such and we have heard no evidence of the quantity of sand and its economic feasibilities to justify giving them too much weight. Counsel for the appellant on the other hand relies on the award of 55 cents p.s.f. made by the Collector for Lot 152 of Mukim XXX belonging to Sembawang Estates Ltd. This Lot has an area of approximately 31 acres of which 26 acres is zoned as "Agricultural" and 4.7 acres as "Rural". It was acquired by the Government in 1975. An offer of $1 p.s.f. was made for this Lot by Nam Kee Nurseries in March 1973 and repeated in July 1973. In our opinion this is not a good comparable because the land was acquired in 1975 i.e. four years after the subject land was acquired. Property prices had arisen very substantially in 1972 and 1973. In fact the property market had reached its peak in September 1973. The offer of $1 p.s.f. in March and again in July 1973 by Nam Kee Nurseries was in our opinion made with a view to speculation as the property market was still rising. Between 1971 and 1975 the prices had doubled, in some cases even trebled. This is a fact well-known to all property valuers and has been conceded before this Board time and again. In our opinion if this property had been acquired in 1971 the award by the Collector would have been much less than 55 cents p.s.f.

As regards acquisition of Lot 154 Mukim XXX in 1972 which is also relied upon by the appellant, in our opinion this is also not a very good comparable. First, this property had road frontage on Tampines Road which is a main road in this area. Secondly, the property had an ample water supply in the form of ponds and was therefore eminently suitable for quarrying sand, whereas the subject property has no water supply at all and water supply will have to be created for the purposes of quarrying sand.

In our view, the royalty method of determining the value of the sand bearing potential of the land is relevant. This basis is used both by the appellant's valuers (Valuation B) and the Deputy Chief Assessor in his final Report. We find as a fact that a 20% tribute by way of royalty to the owner seems to be a more realistic basis of his likely income. As we have found that escalating costs are not relevant in determining values in 1971 the selling price per cubic yard would be $3.50. A royalty of 20% on this would therefore yield to the owner 70 cents per cubic yard.

As to the exact amount of extractable sand on the land we were very impressed with the approach taken by an obvious expert in the field Mr. J. Constant who was called by the appellant. His figure of 1.975 million cubic yards however, we found difficulty in accepting because it did not take into account the possible resiting of the protected tenants on the fringes and a 50 yard statutory quarrying limit. He proceeds on the basis that all the ground tenants can be cleared. There is no evidence of this being legally or practically feasible. Even if possible, the costs would probably be exorbitant, finally making the same dent to the prospective profits and resultant valuation.

In any event, the figure is not in consonance with another report by appellant's consultants, Maunsell, which puts the amount of sand at 1.775 million cubic yards. We accept that the figure used by Mr. Loy the respondent's geologist i.e. 1.637 million cubic yards of sand is probably more accurate but as we are dealing with estimates, we think a figure of 1.7 million cubic yards would not be inaccurate. We think that this figure should be reduced by 100,000 cubic yards for the resited tenants and the 50 yard statutory boundary. This would leave in our view 1.6 million cubic yards of extractable sand.

On the basis of 70 cents per cubic yard as the profit, this would yield an annual profit of $105,000 based on a production of 150,000 cubic yards per year. Both sides seem to agree that a multiplier is necessary to determine the value of the whole land. The respondent, using a life span of 10½ years at 6½% interest determines the multiplier as 7.623. The appellant's multiplier is based on 13 years' life span to extract a higher quantity of sand which they contend is extractable. The figure is also different for the reason that the appellant's valuer has used the escalating cost basis. Having accepted the lower figure of extractable sand and having rejected the escalating basis of valuation, we accept that the respondent's multiplier is correct.

This calculation results in a valuation of the sand bearing potential at $800,467 made up as follows:—

150,000 cu. yds. x .70 cents x 7.6235 = $800,467
or 34.631 cents per sq. ft.

Adding to the above, the agreed residual value brings the value per square foot to 54.631 cents.

On the cost of clearing and resiting the persons on the land, the figure of $200,000 is probably sufficient. The figure of $270,000 as contended by the respondent is in our view on the high side and the figure of $145,000 as contended by the appellant is on the low side. This would reduce the above figure of 54.631 cents by 8.653 cents per sq. ft. leaving a valuation of 45.978 cents per sq. ft.

In our view, it would not be correct to leave this figure as correctly reflective of the land value in 1971 as it would not have taken into account a valuable element of potential growth which any willing buyer and seller would, in our view, take into account in determining the value of the land on that date. Whether such hypothetical buyer was going to work it himself or otherwise would in our view feature in both their minds in a hypothetical sale and purchase.

As this acquisition took place in 1971 before the 1973 amendments which by statute exclude the potential growth factor, this factor can and indeed ought to be taken into account. The very fact that there was sand on the land, which would presumably increase in value, allows for this element to be taken into consideration. The fact that it would become a "narrow" marketable item in the late seventies since H.D.B., the largest single consumer quarries its own sand, would not, in our view, be a basis for pessimism in 1971.

Taking into account all the relevant factors and giving the best consideration that we can to the evidence and submissions in this case we think that an added value of 9 cents per sq. ft. for the potential element would be reasonable. This places a final figure of 55 cents per sq. ft. for the acquired land which in our view is a realistic value as at June 9, 1971 and we accordingly award to the appellant the sum of $1,271,271.65.

The appellant is entitled to interest at 6% per annum from the date the Collector took possession of the appellant's property i.e. from August 14, 1972. This interest is payable on the sum of $793,704.65 which is the difference between the amount awarded by the Collector and the amount awarded by this Board.

As the amount claimed by the appellant exceeds by more than 20% the amount awarded by the Board there shall be no order regarding costs, under section 32(4) of the Land Acquisition Act.

Appeal allowed.

Solicitors: *Hilborne & Co.*

LOKE HONG KEE (S) PTE LTD. v. UNITED OVERSEAS LAND LTD.

[O.C.J. (D'Cotta J.) September 8, 1978]
[Singapore — Case Stated No. 1 of 1978]

Arbitration — Case stated — Supplemental agreement — Whether connected with and to be read with principal agreement — Whether provision for arbitration in principal agreement could apply to disputes under supplemental agreement — Whether delay of nominated sub-contractor could be taken into consideration — Amendment of pleadings — Certificate issued by architect after commencement of arbitration proceedings — Whether binding — Extension of time not claimed at appropriate time — Whether arbitrator could grant reasonable extension.

In this case the claimants had by agreement in writing (the principal agreement) undertaken to complete two blocks of flats under the supervision and to the satisfaction of the respondent's architects. By a subsequent supplemental agreement an extension of time was given for the completion of the two blocks of flats. Disputes having arisen between the parties in regard to the progress of the works, the matter was referred to arbitration. The arbitrator agreed with the consent of the parties to state a case to the High Court on points of law. The questions submitted for the consideration of the court by the respondents were —

(1) Whether the arbitrator could open up, review or revise the opinion of the architect under the supplemental agreement pursuant to powers conferred on the architect by the principal agreement.

(2) Whether for the purposes of the supplemental agreement it was sufficient that the architect should have formed an